

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

7th & ALLEN EQUITIES,)
)
Plaintiff,)
)
) CIVIL ACTION
v.)
)
HARTFORD CASUALTY INSURANCE)
COMPANY,)
)
Defendant.)

O R D E R

AND NOW, this _____ day of November, 2012, upon consideration of Plaintiff's Motion for Leave to File a Motion *in Limine* Based on The Court's Above-Captioned Summary Judgment Disposition, opposition thereto (if any), and the record as a whole, it hereby is **ORDERED and DECREED** that the said motion is **GRANTED**.

AND IT FURTHER IS ORDERED and DECREED that the Court **SHALL CONSIDER** Exhibit A to Plaintiff's said Motion for Leave as Plaintiff's duly-filed Motion *in Limine* to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit.

BY THE COURT:

JAMES K. GARDNER, U.S.D.J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

7th & ALLEN EQUITIES,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	NO. 11-CV-01567
HARTFORD CASUALTY INSURANCE)	
COMPANY,)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR LEAVE TO FILE A
MOTION IN LIMINE BASED ON THE COURT'S ABOVE-
CAPTIONED SUMMARY JUDGMENT DISPOSITION**

NOW COMES plaintiff 7th & Allen Equities, by and through its undersigned counsel, Silverang & Donohoe, LLC, and, on the grounds stated in the within Memorandum of Law (incorporated herein), hereby moves this Honorable Court for leave to file a Motion *in Limine* Based on the Court's Above-Captioned Summary Judgment Decision (*viz.*, Plaintiff's Motion *in Limine* to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit, annexed hereto as **Exhibit A**).

WHEREFORE, plaintiff respectfully requests this Honorable Court grant its said Motion for Leave, enter an Order of the substance submitted herewith, and grant plaintiff

such other relief that the Court deems appropriate under the circumstances.

Respectfully submitted,

SILVERANG & DONOHOE, LLC

/s/ Mark S. Haltzman

By:

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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
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7th & ALLEN EQUITIES,)
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) NO. 11-CV-01567
HARTFORD CASUALTY INSURANCE)
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Defendant.)

**MEMORANDUM OF LAW SUPPORTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE A MOTION IN LIMINE BASED ON
THE COURT'S ABOVE-CAPTIONED SUMMARY JUDGMENT DISPOSITION**

I. FACTS

This matter will be tried before a jury.

On November 2, 2012, this Court disposed of the summary judgment motion of defendant Hartford Casualty Insurance Company. *See* Above-captioned Docket Report, Doc. 96 (incorporated herein).

The Court stated as follows in the opinion supporting that disposition:

[T]he [insurance] Policy [at issue in this case] does not refer to the International Fire Code and the International Building Code, which require that the interior of buildings with a wet-sprinkler system be heated to a minimum of 40 degrees Fahrenheit. Furthermore, defendant has not established that the third floor temperature was below 40 degrees at the time of the March 4, 2009 incident.

7th & Allen Equities v. Hartford Cas. Ins. Co., C.A. No. 11-01567, slip op. at 21 (E.D. Pa. Nov. 2, 2012) (Gardner, J.).

II. LAW

The Court may permit any submissions the Court deems necessary. *See, e.g.*, U.S.D.C. E.D. Pa. L.R. 7.1(c). *See also* Policies and Procedures of the Hon. James K. Gardner, 7, ¶ 2 (“the purpose of a motion *in limine* is to dispose of evidentiary matters out of the hearing of the jury”).

III. LAW APPLIED TO FACTS

Plaintiff wishes to move *in limine* to preclude defendant from proffering evidence or argument about certain issues resolved by way of the Court’s said Summary Judgment Disposition; in particular: A Motion *in Limine* to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit. *See Exhibit A* hereto (plaintiff’s proposed said Motion *in Limine*) (incorporated herein).

Inasmuch as this matter will be tried before a jury, the purpose of a motion *in limine* is to dispose of evidentiary matters out of the hearing of the jury, and plaintiff cannot have predicted the Court said Disposition, then plaintiff seeks leave to file such a motion regarding certain issues resolved by the Court’s said Disposition.

IV. CONCLUSION

Therefore, plaintiff respectfully requests this Honorable Court grant its said

Motion for Leave, and enter an Order of the substance submitted herewith, and grant plaintiff such other relief that the Court deems appropriate under the circumstances.

Respectfully submitted,

SILVERANG & DONOHOE, LLC

/s/ Mark S. Haltzman

By: _____

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Attorneys for Plaintiff

EXHIBIT “A”

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) NO. 11-CV-01567
HARTFORD CASUALTY INSURANCE)
COMPANY,)
)
Defendant.)

O R D E R

AND NOW, this _____ day of November, 2012, upon consideration of Plaintiff's Motion *in Limine* to Preclude Defendant from Proffering Evidence or Argument at the Trial Hereof regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit, opposition thereto (if any), and the record as a whole, it hereby is **ORDERED and DECREED** that the said motion is **GRANTED**.

AND IT FURTHER IS ORDERED and DECREED that defendant Hartford Casualty Insurance Company hereby is **PRECLUDED** from proffering evidence, or argument, at the above-captioned trial regarding the International Fire Code, the International Building Code, or that Plaintiff Failed to Maintain the Interior Temperature of the Third Floor of the Subject Building Above Forty Degrees Fahrenheit.

BY THE COURT:

JAMES K. GARDNER, U.S.D.J.

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HARTFORD CASUALTY INSURANCE)
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)
 Defendant.)

**PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFENDANT FROM
PROFFERING EVIDENCE OR ARGUMENT AT THE TRIAL HEREOF
REGARDING THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL
BUILDING CODE, OR THAT PLAINTIFF FAILED TO MAINTAIN THE
INTERIOR TEMPERATURE OF THE THIRD FLOOR OF THE SUBJECT
BUILDING ABOVE FORTY DEGREES FAHRENHEIT**

NOW COMES plaintiff 7th & Allen Equities, by and through its undersigned counsel, Silverang & Donohoe, LLC, and, on the grounds stated in the within Memorandum of Law (incorporated herein), hereby moves this Honorable Court to preclude defendant Hartford Casualty Insurance Company from proffering evidence or argument at the trial hereof regarding the International Fire Code, the International Building Code, or that plaintiff failed to maintain the interior temperature of the third floor of the subject building above forty degrees Fahrenheit.

WHEREFORE, plaintiff respectfully requests this Honorable Court grant its said Motion *in Limine*, enter an Order of the substance submitted herewith, and grant plaintiff

such other relief that the Court deems appropriate under the circumstances.

Respectfully submitted,

SILVERANG & DONOHOE, LLC

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MEMORANDUM OF LAW SUPPORTING
PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE DEFENDANT FROM
PROFFERING EVIDENCE OR ARGUMENT AT THE TRIAL HEREOF
REGARDING THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL
BUILDING CODE, OR THAT PLAINTIFF FAILED TO MAINTAIN THE
INTERIOR TEMPERATURE OF THE THIRD FLOOR OF THE SUBJECT
BUILDING ABOVE FORTY DEGREES FAHRENHEIT

I. FACTS

On November 2, 2012, this Court disposed of the summary judgment motion of defendant Hartford Casualty Insurance Company. *See* Above-captioned Docket Report, Doc. 96 (incorporated herein).

The Court stated as follows in the slip opinion supporting that disposition:

[T]he [insurance] Policy [at issue in this case] does not refer to the International Fire Code and the International Building Code, which require that the interior of buildings with a wet-sprinkler system be heated to a minimum of 40 degrees Fahrenheit. Furthermore, defendant has not established that the third floor temperature was below 40 degrees at the time of the March 4, 2009 incident.

7th & Allen Equities v. Hartford Cas. Ins. Co., C.A. No. 11-01567, slip op. at 21 (E.D. Pa. Nov. 2, 2012) (Gardner, J.).

Hereby, plaintiff seeks to preclude defendant from proffering evidence or argument contrary to the Court's said Disposition, including to the extent same is supported by the above-quoted portion of the Court's slip opinion supporting that Disposition.

II. LAW

The "law of the case" doctrine posits that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618, 103 S. Ct. 1382, 1391 (1983). See also *M&M Stone Co. v. Hornberger*, C.A. No. 07-4784, 2009 WL 3245460, at *12 (E.D. Pa. Sept. 30, 2009) (Gardner, J.) (same).

III. LAW APPLIED TO FACTS

Based on the Court's disposition of defendant's Summary Judgment Motion with respect to whether the International Fire Code and the International Building Code play any role in this matter, and whether defendant has established that the third floor temperature in the subject building was below 40 degrees at the time of the March 4, 2009 incident, plaintiff seeks to preclude defendant from proffering evidence or argument contrary to the law of the case on those issues.

IV. CONCLUSION

Therefore, plaintiff respectfully requests this Honorable Court grant its said Motion *in Limine*, enter an Order of the substance submitted herewith, and grant plaintiff

such other relief that the Court deems appropriate under the circumstances.

Respectfully submitted,

SILVERANG & DONOHOE, LLC

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Defendant.)

CERTIFICATE OF SERVICE

I certify I caused a true and complete copy of the within *Plaintiff's Motion for Leave to File a Motion in Limine Based on The Court's Above-Captioned Summary Judgment Disposition* to be served upon those listed below pursuant to Fed. R. Civ. P. 5(b)(3) and U.S.D.C. E.D. Pa. L.R. 5.1.2.8 by filing same with the above-captioned Court via its Electronic Case Filing system, where a copy of same is available for viewing and downloading, on November 6, 2012:

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